

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:04-cr-099
Also Case No. 1:10-cv-656

-vs-

Chief Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

:

WENDELL ROSS,

Defendant.

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendant's Motion for Return of Property under Fed. R. Crim. P. 41(g) (Doc. No. 119). Upon Order from the Court for an answer, the United States shows by certified copies of the appropriate documentation that the cash Defendant seeks (\$1, 382) was forfeited from him by the State of Ohio in Case No. 040565 (Doc. No. 125). In particular, the attachments to the Government's Response show filing of a Petition for Forfeiture in the referenced case, service on Mr. Ross (proved by certified mail receipt) and a final judgment from the Hamilton County Common Pleas Court forfeiting the cash. If Defendant believes the judgment is improper in some way, his remedy lies in the state court system, although it is doubtful relief from judgment can be obtained now, more than six years after the judgment became final. Because the United States surrendered possession of the cash pursuant to a facially valid judgment of a court of record, the Motion should be denied as to the cash.

With respect to the two cell phones whose return is also sought, the United States disclaims any interest in retaining that property and will supplement its response once a search has been

completed by the Clerk of Court's office. The Magistrate Judge recommends that the Motion be granted as to the cell phones if they are found. If they are not found, the Magistrate Judge will make a supplemental report when the United States files its supplemental response.

December 1, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).